



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO.8 OF 2014

(An appeal against original conviction and sentence of

Sotik PMTR. Case No.47 of 2014 – Hon. P. Olengo – Principal Magistrate)

STANLEY KIPNGETICH YEGON.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

On 5th February 2014, Stanley Kipngetich Yegon, the Appellant herein, appeared before the subordinate court and pleaded guilty to a charge of four counts namely:

Count 1:Riding a motorcycle on a public road without Insurance contrary to Section 103 B(3) (7) of New Traffic Amendment Act No.37 of 2012 Cap.405 Laws of Kenya.

Particulars: On the 27th day of January 2014 at about 11.00 p.m. along Sotik-Ndanai road within Bomet County being the rider of a motorcycle registration number KMCN 393D make Bajaj Boxer did ride the same on a public road without Insurance cover.

Count II:Riding a motorcycle on a public road without riders licence contrary to Section 103 B (5) (7) of the Traffic Amendment Act No.37 of 2012 Cap.403 Laws of Kenya.

Particulars: On the 27th day of January 2014 at about 11.00 p.m., along Sotik-Ndanai road within Bomet County being the rider of a motorcycle registration number KMCN 393D make Bajaj Boxer did ride the same on a public road without riders licence.

Count III: Riding a motorcycle on a public road without Helmet contrary to Section 103 B (7) of Traffic Amendment Act No.37 of 2012 Cap. 403 Laws of Kenya.

Particulars: On the 27th day of January 2014 at about 11.00 p.m. along Sotik-Ndanai road within Bomet Conty being the rider of a motorcycle registration number KMCN 393D make Bajaj Boxer did ride the same on a public road without helmet which was unsafe.

Count IV:Riding a motorcycle on a public road without reflection jacket contrary to Section 103 B (2) (7) of the Traffic Amendment Act No.37 of 2012 Cap.403 Laws of Kenya.

Particulars:On the 27th day of January 2014 at about 11.00 p.m. along Sotik-Ndanai road within Bomet County being the rider of a motorcycle registration number KMCN 393D make Bajaj boxer did ride the same on a public road without a reflective jacket which was unsafe.

The Appellant was thereafter convicted and sentenced to pay a fine of Kshd.5000/= in default to serve 2 months imprisonment in each count. Being aggrieved, the Appellant preferred this appeal.

On appeal, the Appellant put forward the following grounds in his Petition:

1. *The trial Magistrate erred in law and fact by entering a conviction without the facts of the charge being read to the Appellant.*
2. *That without prejudice the appellant was not given an opportunity to mitigate.*

When the appeal came up for hearing, Mr. Lopokoiyit, learned Prosecution State Counsel conceded the appeal on the grounds set out by the Appellant.

It is the submission of Mr. Rono, learned advocate for the Appellant that the trial court convicted the Appellant on his own plea of guilty whereas the facts supporting the charge were not stated. With respect, I agree with the submissions of Mr. Rono, that the prosecution had failed to outline the facts in support of the charge in each count. The provisions of Section 207 of the Criminal Procedure Code requires that before convicting any person on his own plea of guilty, the prosecution should be called upon to outline the facts in support of the charge after which the accused is invited to confirm or deny the veracity of those facts. This did not happen in this case. It cannot therefore be said that the plea was unequivocal. I must commend Mr. Lopokoiyit for conceding this appeal.

The second ground argued is to the effect that the Appellant was not given a chance to mitigate. It is apparent from the record that after convicting the Appellant, the learned Principal Magistrate straight away pronounced the sentence without first giving the Appellant a chance to submit his facts in mitigation. The learned Principal Magistrate therefore did not adhere to the provisions of Section 329 of the Criminal Procedure Code. Had he done so, he would have given the appropriate sentence.

In the end and on the basis of the above grounds, the appeal is allowed. Consequently the order on conviction is quashed and the sentence is set aside. Any fines paid should immediately be refunded to the Appellant and if the Appellant is serving the default sentence, he should be set free forthwith.

Dated, signed and delivered in open court this 16th day of May 2014

J. K. SERGON

JUDGE

In the presence of:

Lopokoiyit for Director of Public Prosecution

J. K. Rono for the Appellant

Appellant: present in person